

Chapter 82: Priority Toxic Chemical Reporting and Pollution Prevention Planning

SUMMARY: This rule details the reporting requirements for commercial and industrial facilities that use chemicals designated in state law as “priority toxic chemicals” under Maine’s Priority Toxic Chemical Use Reduction laws, and sets forth the pollution prevention planning requirements and reduction goals for commercial and industrial facilities using those chemicals in excess of quantities established in this rule.

- 1. Definitions.** For the purposes of understanding the provisions in this rule, the definitions in this section must be used.
 - A. Alternative.** “Alternative” means a substitute process, product, material, chemical, strategy or a combination of these that serves a purpose functionally equivalent to that of a priority toxic chemical used by a commercial and industrial facility.
 - B. CMR.** “CMR” means the Code of Maine Rules.
 - C. Commercial and industrial facility.** “Commercial and industrial facility” means an entity:
 - (1) With an economic sector or industry code under the North American Industry Classification System of the United States Department of Commerce, United States Census Bureau; and,
 - (2) Located in the State.
 - D. Environmental management system.** “Environmental management system” means a part of an overall management system of a facility and includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving and maintaining the environmental policy of the facility through documented systematic procedures.
 - E. Facility.** “Facility” means a commercial and industrial facility as defined in subsection 1(C) of this rule.
 - F. M.R.S.** “M.R.S.” means the Maine Revised Statutes.
 - G. Operator.** “Operator” means any natural person who is in control of and responsible for the operation of a facility as defined in this section.
 - H. Owner.** “Owner” means any person who alone, or in conjunction with others, owns a facility as defined in this section.
 - I. Person.** “Person” means any natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, government entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.
 - J. Priority toxic chemical.** “Priority toxic chemical” means a toxic chemical that has been designated as a priority toxic chemical pursuant to 06-096 CMR chapter 81.
 - K. Reasonably available.** “Reasonably available” means practicable based on cost, efficacy, availability and other factors as determined by the department.

- L. Safer alternative.** “Safer alternative” means an alternative that, when compared to a priority chemical that it could replace, would reduce the potential for harm to human health or the environment or that has not been shown to pose the same or greater potential for harm to human health or the environment as that priority chemical.
- M. Toxic chemical.** “Toxic chemical” means a chemical that has been identified as a chemical of high concern on a list published by the department under 38 MRSA § 1693.
- N. Use.** “Use” means to manufacture, process, or otherwise use a priority toxic chemical or to use a product or material that contains a priority toxic chemical if so designated by the department.
- 2. Reporting Requirements.** A commercial and industrial facility that, during any calendar year, uses a priority toxic chemical listed in Maine’s *Designation of Priority Toxic Chemicals* rule, 06-096 CMR 81, must report that usage in accordance with this section.
- A. Reporting threshold.** The report must be filed if the facility uses more than 1,000 pounds of the chemical during any calendar year, unless 06-096 CMR 81 establishes a different reporting threshold.
- B. Calculation of threshold.** In calculating the reporting threshold, the facility is not required to include quantities of the priority toxic chemical in a mixture or trade name product at less than 1.0%, unless the chemical is listed as a carcinogen in 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009). If the chemical is a carcinogen under 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009), the facility is not required to include quantities of the chemical at less than 0.1%.
- (1) The identity of a priority toxic chemical in a mixture or trade name product must be determined using the specific name of the chemical with a corresponding chemical abstracts service registry number that appears on the material safety data sheet required under 29 Code of Federal Regulations, Part 1910, Section 1200 (2009) referred to in this subsection as "the material safety data sheet."
- (2) To quantify the amount of a priority toxic chemical, a commercial and industrial facility may rely on the material safety data sheet or other information that is in the possession of the facility, unless the facility knows or it is generally known in the industry based on widely disseminated industry information that the material safety data sheet or other information is inaccurate or incomplete, based on existing reliable test data or other reliable published scientific evidence. A facility is not required to test or perform file searches to identify or quantify the amount of a priority toxic chemical in a mixture or trade name product. A facility is not required to evaluate a chemical unless the facility does not rely on the evaluation performed by the preparer of the material safety data sheet.
- C. Due date.** Reports required under this section must be filed annually by July 1st beginning in 2013 except that the department may not require a report to be filed less than 18 months after adoption of a rule naming identifying a priority toxic chemical. The report must be filed using the form prepared by the department for this purpose and must include information for the prior calendar year.

- D. Confidentiality.** Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions of 38 M.R.S. §1310-B. The designation must be clearly indicated on each page or other portion of information that the party wishes to be kept confidential. If information is so designated, the provisions of section 1310-B apply. Section 1310-B provides, in pertinent part:

The commissioner shall establish procedures to ensure that information [designated as confidential] is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346.

- 3. Pollution prevention plans and reduction goals.** Within 18 months after the department identifies a priority toxic chemical under chapter 81, an owner or operator of a commercial or industrial facility that uses the chemical in an amount exceeding the reporting threshold shall develop a pollution prevention plan. The plan must be finalized, approved and signed by a senior official with management responsibility for the facility.

A. Plan requirements. A pollution prevention plan must include, at a minimum, the following:

- (1) A statement of facility-wide management policy regarding toxics use reduction;
- (2) Identification, characterization and accounting of the types and amounts of all priority toxic chemicals used at the facility;
- (3) Identification, analysis and evaluation of any appropriate technologies, procedures, processes, chemical alternatives, equipment or production changes that may be used by the facility to reduce the amount or toxicity of priority toxic chemicals used including a financial analysis of the costs and benefits of reducing the amount of priority toxic chemicals used;
- (4) A strategy and schedule for implementing practicable reduction options for each priority toxic chemical;
- (5) A program for maintaining records on priority toxic chemical use and management costs, such as the costs of personal protection equipment, liability insurance, training, chemical storage and disposal;
- (6) The facility's goal for reducing use of priority toxic chemicals and products and materials containing such chemicals;

- (7) An employee awareness and training program that informs employees of the use of priority toxic chemicals by the facility and involves employees in achieving the established reduction goal under this subsection; and,
- (8) An assessment of alternatives explored to reduce use of priority toxic chemicals that is prepared according to standard methods or guidelines for conducting alternatives assessments made available by the department.

B. Facilities with an environmental management system. A facility that has an environmental management system that is audited by a 3rd party or reviewed by the department and that includes a plan to reduce use of priority toxic chemicals and of products and materials containing priority toxic chemicals meets the planning requirements of this section.

C. Plan retention and revision. The owner or operator of a facility shall keep a complete copy of the pollution prevention plan or environmental management system and any backup data on the premises of that facility and make the copy and data available to employees of the department for inspection during business hours upon request. The department may require the owner or operator of a facility to make any modifications to a plan or environmental management system to maintain consistency with the policy of this chapter. The plan must be reviewed and updated every two years.

- 4. Exemptions.** The department may exempt classes of facilities and specific uses of priority toxic chemicals by commercial and industrial facilities from the requirements of this chapter if the department determines that no reasonably available safer alternative exists, that the chemical is naturally occurring or that application of this chapter is unlikely to result in the reduction of the use of a priority toxic chemical.

A facility subject to the requirements of this chapter may file an application for an exemption from some or all of the requirements of this chapter on a form developed by the department. The department shall rule on a request for an exemption within 120 days of receipt of an application.

STATUTORY AUTHORITY: 38 M.R.S. §2329

EFFECTIVE DATE: